

Accordingly, the claims that read on the elected species are as follows: Claims 1 to 10, 20 to 34 and 42 to 56.

The election is made with traverse. Traversal is on the grounds that the Office Action has not established any of the factual predicates needed to impose a requirement to elect between species, since the Office Action did not identify the specifically different embodiments described in the specification. In more detail, according to current USPTO practice and procedure, species are always specifically different embodiments of the invention, such that when imposing a requirement to elect between different species, the PTO is required to identify the specifically different embodiments described in the specification. This was not done. Rather, the USPTO relied on the claim language of the independent claims to "manufacture" different embodiments. This is evident from a comparison of the description of each of the seven different alleged "species", and is particularly underscored by the identification of species (vii) (at page 5 of the Office Action) in which the claim number "51" is included as part of the definition of the species.

It is incorrect procedurally to equate claims to specifically different embodiments of the invention. MPEP § 806.04(e) explains the reason for this: individual claims can sometimes cover two or more of the disclosed embodiments, such that it is nonsensical to rely on claim language to define specifically different embodiments:

"Claims are definitions of inventions. Claims are never species. Claims may be restricted to a single disclosed embodiment (i.e., a single species, and thus be designated a specific species claim), or a claim may include two or more of the disclosed embodiments within the breadth and scope of definition (and thus be designated a generic or genus claim).

original.) "Species are always the specifically different embodiments." (Emphasis in original.)

Since the Office Action did not identify any of the "specifically different embodiments", as it was required to do, the requirement to elect is faulty and should be withdrawn.

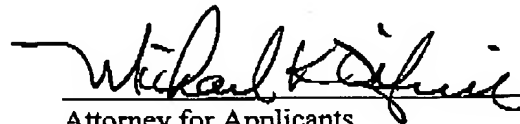
Traversal is also based on burden, since it is not believed that the Examiner has demonstrated that there would be any undue burden in examining all of the claims in a single application. It has always been the prerogative of patent applicants to present claims to a reasonable number of species, as the term "reasonable" is used in 37 C.F.R. § 1.141(a). In this case, the specification identifies seven embodiments, which is believed reasonable given the scope of invention and patent protection sought therefor.

Applicant therefore respectfully requests withdrawal of the entire requirement for restriction, resulting in examination of all claims on the merits.

On the other hand, should the requirement for election be maintained, then Applicant respectfully requests the Examiner to clarify the basis for it, within the confines of procedure established by the USPTO for election between species. Should the Examiner change his grounds for election, then Applicant also reserves the right to change his election which, as noted above, is a provisional election with traverse.

Applicant's undersigned attorney may be reached in our Costa Mesa,
California office at (714) 540-8700. All correspondence should continue to be directed to
our below-listed address.

Respectfully submitted,



Attorney for Applicants
Michael K. O'Neill
Registration No.: 32,622

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3800
Facsimile: (212) 218-2200

CA_MAIN 112715v1